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AMENDED IN ASSEMBLY JUNE 10, 2004  
AMENDED IN ASSEMBLY SEPTEMBER 12, 2003  
AMENDED IN ASSEMBLY SEPTEMBER 5, 2003  
AMENDED IN ASSEMBLY AUGUST 25, 2003  
AMENDED IN ASSEMBLY AUGUST 18, 2003  
AMENDED IN ASSEMBLY JULY 9, 2003

**SENATE BILL**

**No. 18**

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**Introduced by Senators Burton, Chesbro, and Ducheny**

December 2, 2002

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An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65092, 65351, 65352, 65560 of, and to add Sections ~~65351.1~~, ~~65351.2~~ 65352.3, 65352.4, and 65562.5 to the Government Code, relating to traditional tribal cultural places.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Burton. Traditional tribal cultural places.

(1) Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property.

Existing law authorizes only specified entities or organizations, including certain tax-exempt nonprofit organizations, and local government entities to acquire and hold conservation easements, if those entities and organizations meet certain conditions.

This bill would include a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe, ~~band, or nation~~ that is ~~listed on a specified catalog on the contact list~~ maintained by the Native American Heritage Commission, among those entities and organizations that may acquire and hold conservation easements, *as specified*.

(2) Existing law requires the Office of Planning and Research to implement various long range planning and research policies and goals that are intended to shape statewide development patterns and significantly influence the quality of the state's environment and, in connection with those responsibilities, to adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans.

This bill would require that, *by March 1, 2005*, the guidelines contain advice, *developed in consultation with the Native American Heritage Commission*, for consulting with California Native American tribes for the preservation of, or the mitigation of impacts to, specified Native American places, features, and objects, ~~and prescribe~~. *The bill would also require those guidelines to address procedures for identifying the appropriate California Native American tribes and for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects. The bill would define a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission as a "person" for purposes of provisions relating to public notice of hearings relating to local planning issues.*

(3) Existing law requires a planning agency during the preparation or amendment of the general plan, to provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate.

This bill would require the planning agency *on and after March 1, 2005*, to *refer the proposed action to California Native American tribes, as specified, and also* ~~conduct consultation with~~ *provide opportunities for involvement of California Native American tribes*. The bill would require that, prior to the adoption or amendment of a city or county's



general plan, the city or county conduct consultations with California Native American tribes for the purpose of preserving specified places, features, and objects that are located within the city or county’s jurisdiction. The bill would define the term “consultation” for purposes of those provisions. By imposing new duties on local governments with respect to consultations regarding the protection and preservation of California Native American historical, cultural, and sacred sites, the bill would impose a state-mandated local program.

This bill would include open space for the protection of California Native American historical, cultural, and sacred sites within the definition of “local open-space plan” for purposes of provisions governing the preparation of the open-space element of a city and county general plan.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) Current state law provides a limited measure of protection  
4 for California Native American prehistoric, archaeological,  
5 cultural, spiritual, and ceremonial places.

6 (2) Existing law provides limited protection for Native  
7 American sanctified cemeteries, places of worship, religious,  
8 ceremonial sites, sacred shrines, historic or prehistoric ruins,  
9 burial grounds, archaeological or historic sites, inscriptions made



1 by Native Americans at those sites, archaeological or historic  
2 Native American rock art, and archaeological or historic features  
3 of Native American historic, cultural, and sacred sites.

4 (3) Native American places of prehistoric, archaeological,  
5 cultural, spiritual, and ceremonial importance reflect the tribes'  
6 continuing cultural ties to the land and to their traditional  
7 heritages.

8 (4) Many of these historical, cultural, and religious sites are not  
9 located within the current boundaries of California Native  
10 American ~~reservation~~ *reservations* and rancherias, and therefore  
11 are not covered by the protectionist policies of tribal governments.

12 (b) In recognition of California Native American tribal  
13 sovereignty and the unique relationship between California local  
14 governments and California tribal governments, it is the intent of  
15 the Legislature, in enacting this act, to accomplish all of the  
16 following:

17 (1) Recognize that California Native American prehistoric,  
18 archaeological, cultural, spiritual, and ceremonial places are  
19 essential elements in tribal cultural traditions, heritages, and  
20 identities.

21 (2) Establish meaningful consultations between California  
22 Native American tribal governments and California local  
23 governments at the earliest possible point in the local government  
24 land use planning process so that these places can be identified and  
25 considered.

26 (3) Establish government-to-government consultations  
27 regarding potential means to preserve those places, determine the  
28 level of necessary confidentiality of their specific location, and  
29 develop proper treatment and management plans.

30 (4) Ensure that local and tribal governments have information  
31 *available early in the land use planning process* to avoid potential  
32 conflicts over the preservation of California Native American  
33 prehistoric, archaeological, cultural, spiritual, ~~and ceremonial~~  
34 ~~places before development entitlements vest and investments are~~  
35 ~~made.~~ *and ceremonial places.*

36 (5) Enable California Native American tribes to manage and  
37 act as caretakers of California Native American prehistoric,  
38 archaeological, cultural, spiritual, and ceremonial places.

39 (6) Encourage local governments to consider preservation of  
40 California Native American prehistoric, archaeological, cultural,



1 spiritual, and ceremonial places in their land use planning  
2 processes by placing them in open space.

3 (7) Encourage local governments to consider *the* cultural  
4 aspect of California Native American prehistoric, archaeological,  
5 cultural, spiritual, and ceremonial places early in land use planning  
6 processes.

7 SEC. 2. Section 815.3 of the Civil Code is amended to read:  
8 815.3. Only the following entities or organizations may  
9 acquire and hold conservation easements:

10 (a) Tax-exempt nonprofit organization qualified under Section  
11 501(c)(3) of the Internal Revenue Code and qualified to do  
12 business in this state which has as its primary purpose the  
13 preservation, protection, or enhancement of land in its natural,  
14 scenic, historical, agricultural, forested, or open-space condition  
15 or use.

16 (b) The state or any city, county, city and county, district, or  
17 other state or local governmental entity, if otherwise authorized to  
18 acquire and hold title to real property and if the conservation  
19 easement is voluntarily conveyed. No local governmental entity  
20 may condition the issuance of an entitlement for use on the  
21 applicant's granting of a conservation easement pursuant to this  
22 chapter.

23 (c) A federally recognized California Native American tribe or  
24 a nonfederally recognized California Native American tribe, band,  
25 or nation that is listed on the catalog of places of special religious  
26 or social significance to Native Americans maintained by the  
27 Native American Heritage Commission pursuant to subdivision  
28 (a) of Section 5097.94 of the Public Resources Code. *that is on the*  
29 *contact list maintained by the Native American Heritage*  
30 *Commission to protect a California Native American prehistoric,*  
31 *archaeological, cultural, spiritual, or ceremonial place, if the*  
32 *conservation easement is voluntarily conveyed.*

33 SEC. 3. Section 65040.2 of the Government Code is amended  
34 to read:

35 65040.2. (a) In connection with its responsibilities under  
36 subdivision (l) of Section 65040, the office shall develop and adopt  
37 guidelines for the preparation and content of the mandatory  
38 elements required in city and county general plans by Article 5  
39 (commencing with Section 65300) of Chapter 3. For purposes of  
40 this section, the guidelines prepared pursuant to Section 50459 of



1 the Health and Safety Code shall be the guidelines for the housing  
2 element required by Section 65302. In the event that additional  
3 elements are hereafter required in city and county general plans by  
4 Article 5 (commencing with Section 65300) of Chapter 3, the  
5 office shall adopt guidelines for those elements within six months  
6 of the effective date of the legislation requiring those additional  
7 elements.

8 (b) The office may request from each state department and  
9 agency, as it deems appropriate, and the department or agency  
10 shall provide, technical assistance in readopting, amending, or  
11 repealing the guidelines.

12 (c) The guidelines shall be advisory to each city and county in  
13 order to provide assistance in preparing and maintaining their  
14 respective general plans.

15 (d) The guidelines shall contain the guidelines for addressing  
16 environmental justice matters developed pursuant to Section  
17 65040.12.

18 (e) The guidelines shall contain advice including  
19 recommendations for best practices to allow for collaborative land  
20 use planning of adjacent civilian and military lands and facilities.  
21 The guidelines shall encourage enhanced land use compatibility  
22 between civilian lands and any adjacent or nearby military  
23 facilities through the examination of potential impacts upon one  
24 another.

25 (f) The guidelines shall contain advice for addressing the  
26 effects of civilian development on military readiness activities  
27 carried out on all of the following:

- 28 (1) Military installations.
- 29 (2) Military operating areas.
- 30 (3) Military training areas.
- 31 (4) Military training routes.
- 32 (5) Military airspace.
- 33 (6) Other territory adjacent to those installations and areas.

34 ~~(g) The guidelines shall contain advice for consulting with~~  
35 ~~California Native American tribes for the preservation of, or the~~  
36 ~~mitigation of impacts to, places, features, and objects described in~~  
37 ~~Sections 5097.9 and 5097.995 of the Public Resources Code, and~~  
38 ~~shall prescribe procedures for continuing to protect the~~  
39 ~~confidentiality of information concerning the specific identity,~~  
40 ~~location, character, and use of those places, features, and objects.~~



1 (g) By March 1, 2005, the guidelines shall contain advice,  
2 developed in consultation with the Native American Heritage  
3 Commission, for consulting with California Native American  
4 tribes for all of the following:

5 (1) The preservation of, or the mitigation of impacts to, places,  
6 features, and objects described in Sections 5097.9 and 5097.995  
7 of the Public Resources Code.

8 (2) Procedures for identifying through the Native American  
9 Heritage Commission the appropriate California Native  
10 American tribes.

11 (3) Procedures for continuing to protect the confidentiality of  
12 information concerning the specific identify, location, character,  
13 and use of those places, features, and objects.

14 (h) The office shall provide for regular review and revision of  
15 the guidelines established pursuant to this section.

16 SEC. 4. Section 65092 of the Government Code is amended  
17 to read:

18 65092. (a) When a provision of this title requires notice of a  
19 public hearing to be given pursuant to Section 65090 or 65091, the  
20 notice shall also be mailed or delivered at least 10 days prior to the  
21 hearing to any person who has filed a written request for notice  
22 with either the clerk of the governing body or with any other  
23 person designated by the governing body to receive these requests.  
24 The local agency may charge a fee which is reasonably related to  
25 the costs of providing this service and the local agency may require  
26 each request to be annually renewed.

27 (b) As used in this chapter “person” includes a California  
28 Native American tribe *that is on the contact list maintained by the*  
29 *Native American Heritage Commission.*

30 SEC. 5. Section 65351 of the Government Code is amended  
31 to read:

32 65351. During the preparation or amendment of the general  
33 plan, the planning agency shall provide opportunities for the  
34 involvement of citizens *California Native American Indian*  
35 *tribes*, public agencies, public utility companies, and civic,  
36 education, and other community groups, through public hearings  
37 and any other means the city or county deems appropriate. ~~The~~  
38 ~~planning agency shall also conduct consultations with California~~  
39 ~~Native American tribes.~~ *appropriate.*



1 SEC. 6. *Section 65352 of the Government Code is amended*  
2 *to read:*

3 65352. (a) Prior to action by a legislative body to adopt or  
4 substantially amend a general plan, the planning agency shall refer  
5 the proposed action to all of the following entities:

6 (1) ~~Any~~ A city or county, within or abutting the area covered by  
7 the proposal, and ~~any~~ a special district that may be significantly  
8 affected by the proposed action, as determined by the planning  
9 agency.

10 (2) ~~Any~~ An elementary, high school, or unified school district  
11 within the area covered by the proposed action.

12 (3) The local agency formation commission.

13 (4) ~~Any~~ An areawide planning agency whose operations may  
14 be significantly affected by the proposed action, as determined by  
15 the planning agency.

16 (5) ~~Any~~ A federal agency if its operations or lands within its  
17 jurisdiction may be significantly affected by the proposed action,  
18 as determined by the planning agency.

19 (6) ~~Any~~ A public water system, as defined in Section 116275  
20 of the Health and Safety Code, with 3,000 or more service  
21 connections, that serves water to customers within the area  
22 covered by the proposal. The public water system shall have at  
23 least 45 days to comment on the proposed plan, in accordance with  
24 subdivision (b), and to provide the planning agency with the  
25 information set forth in Section 65352.5.

26 (7) The Bay Area Air Quality Management District for a  
27 proposed action within the boundaries of the district.

28 (8) *On and after March 1, 2005, a California Native American*  
29 *tribe, that is on the contact list maintained by the Native American*  
30 *Heritage Commission, with traditional lands located within the*  
31 *city or county's jurisdiction.*

32 (b) Each entity receiving a proposed general plan or  
33 amendment of a general plan pursuant to this section shall have 45  
34 days from the date the referring agency mails it or delivers it in  
35 which to comment unless a longer period is specified by the  
36 planning agency.

37 (c) (1) This section is directory, not mandatory, and the failure  
38 to refer a proposed action to the other entities specified in this  
39 section does not affect the validity of the action, if adopted.



1 (2) To the extent that the requirements of this section conflict  
2 with the requirements of Chapter 4.4 (commencing with Section  
3 65919), the requirements of Chapter 4.4 shall prevail.

4 *SEC. 7.* Section ~~65351.1~~ 65352.3 is added to the Government  
5 Code, to read:

6 ~~65351.1.~~—

7 65352.3. (a) Prior to the adoption or *any* amendment of a city  
8 or county’s general plan, *proposed on or after March 1, 2005*, the  
9 city or county shall *make a reasonable and good faith effort to*  
10 *conduct consultations with California Native American tribes that*  
11 *are on the contact list maintained by the Native American Heritage*  
12 *Commission for the purpose of preserving or mitigating impacts*  
13 *to places, features, and objects described in Sections 5097.9 and*  
14 *5097.995 of the Public Resources Code that are located within the*  
15 *city or county’s jurisdiction.*

16 (b) Consistent with the guidelines developed and adopted by  
17 the Office of Planning and Research pursuant to Section 65040.2,  
18 the city or county shall protect the confidentiality of information  
19 concerning the specific identity, location, character, and use of  
20 those places, features, and objects.

21 ~~SEC. 7.~~—

22 *SEC. 8.* Section ~~65351.2~~ 65352.4 is added to the Government  
23 Code, to read:

24 ~~65351.2.~~—

25 65352.4. For purposes of Section 65351, ~~65351.1~~, 65352.3,  
26 and 65562.5, “consultation” means the meaningful and timely  
27 process of seeking, discussing, and considering carefully the views  
28 of others, in a manner that is cognizant of all parties’ cultural  
29 values and, where feasible, seeking agreement. Consultation  
30 between government agencies and Native American tribes shall be  
31 conducted in a way that is mutually respectful of each party’s  
32 sovereignty. Consultation shall also recognize the tribes’ potential  
33 needs for confidentiality with respect to places that have  
34 traditional tribal cultural significance.

35 ~~SEC. 8.~~—

36 *SEC. 9.* Section 65560 of the Government Code is amended  
37 to read:

38 65560. (a) “Local open-space plan” is the open-space  
39 element of a county or city general plan adopted by the board or



1 council, either as the local open-space plan or as the interim local  
2 open-space plan adopted pursuant to Section 65563.

3 (b) “Open-space land” is any parcel or area of land or water  
4 that is essentially unimproved and devoted to an open-space use  
5 as defined in this section, and that is designated on a local, regional  
6 or state open-space plan as any of the following:

7 (1) Open space for the preservation of natural resources  
8 including, but not limited to, areas required for the preservation of  
9 plant and animal life, including habitat for fish and wildlife  
10 species; areas required for ecologic and other scientific study  
11 purposes; rivers, streams, bays and estuaries; areas adjacent to  
12 military installations, military training routes, and restricted  
13 airspace that can provide additional buffer zones to military  
14 activities and complement the resource values of the military  
15 lands; and coastal beaches, lakeshores, banks of rivers and  
16 streams, and watershed lands.

17 (2) Open space used for the managed production of resources,  
18 including but not limited to, forest lands, rangeland, agricultural  
19 lands and areas of economic importance for the production of food  
20 or fiber; areas required for recharge of ground water basins; bays,  
21 estuaries, marshes, rivers and streams which are important for the  
22 management of commercial fisheries; and areas containing major  
23 mineral deposits, including those in short supply.

24 (3) Open space for outdoor recreation, including but not  
25 limited to, areas of outstanding scenic, historic and cultural value;  
26 areas particularly suited for park and recreation purposes,  
27 including access to lakeshores, beaches, and rivers and streams;  
28 and areas which serve as links between major recreation and  
29 open-space reservations, including utility easements, banks of  
30 rivers and streams, trails, and scenic highway corridors.

31 (4) Open space for public health and safety, including, but not  
32 limited to, areas which require special management or regulation  
33 because of hazardous or special conditions such as earthquake  
34 fault zones, unstable soil areas, flood plains, watersheds, areas  
35 presenting high fire risks, areas required for the protection of water  
36 quality and water reservoirs and areas required for the protection  
37 and enhancement of air quality.

38 (5) Open space for the protection of places, features, and  
39 objects described in Sections 5097.9 and 5097.995 of the Public  
40 Resources Code.



1 ~~SEC. 9.~~—

2 *SEC. 10.* Section 65562.5 is added to the Government Code,  
3 to read:

4 65562.5. If land designated, or proposed to be designated as  
5 open space contains a place, feature, or object described in  
6 Sections 5097.9 and 5097.995 of the Public Resources Code, the  
7 city or county in which the place, feature, or object is located shall  
8 conduct consultations with the California Native American tribe,  
9 if any, that has given notice pursuant to Section 65092 for the  
10 purpose of determining the level of confidentiality required to  
11 protect the specific identity, location, character, or use of the place,  
12 feature, or object and for the purpose of developing ~~proper~~  
13 treatment *with appropriate dignity* of the place, feature, or object  
14 in any corresponding management plan.

15 *SEC. 10.* No reimbursement is required by this act pursuant  
16 to Section 6 of Article XIII B of the California Constitution for  
17 certain costs that may be incurred by a local agency or school  
18 district because in that regard this act creates a new crime or  
19 infraction, eliminates a crime or infraction, or changes the penalty  
20 for a crime or infraction, within the meaning of Section 17556 of  
21 the Government Code, or changes the definition of a crime within  
22 the meaning of Section 6 of Article XIII B of the California  
23 Constitution.

24 However, notwithstanding Section 17610 of the Government  
25 Code, if the Commission on State Mandates determines that this  
26 act contains other costs mandated by the state, reimbursement to  
27 local agencies and school districts for those costs shall be made  
28 pursuant to Part 7 (commencing with Section 17500) of Division  
29 4 of Title 2 of the Government Code. If the statewide cost of the  
30 claim for reimbursement does not exceed one million dollars  
31 (\$1,000,000), reimbursement shall be made from the State  
32 Mandates Claims Fund.

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